

NOV 14 2017

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Federal Communications Commission
Office of the Secretary

In re

**MARITIME COMMUNICATIONS/LAND
MOBILE, LLC**

Participant in Auction No. 61 and Licensee of
Various Authorizations in the Wireless Radio
Services

Applicant for Modification of Various
Authorizations in the Wireless Radio Services

Applicant with **ENCANA OIL AND GAS (USA),
INC.; DUQUESNE LIGHT COMPANY; DCP
MIDSTREAM, LP; PUGET SOUND
ENERGY, INC.; ENBRIDGE ENERGY
COMPANY, INC.; INTERSTATE POWER
AND LIGHT COMPANY; WISCONSIN
POWER AND LIGHT COMPANY; DIXIE
ELECTRIC MEMBERSHIP CORPORATION,
INC.**

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos. 0004030479,
0004193028, 0004193328, 0004354053,
0004309872, 0004314903, 0004315013,
0004430505, 0004417199, 0004419431,
0004422320, 0004422329, 0004507921,
and 0004604962

To: Marlene H. Dortch, Secretary
Attention: The Commission

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**ENFORCEMENT BUREAU'S OPPOSITION TO
HAVENS AND POLARIS APPEALS OF ORDER OF DISMISSAL**

1. On September 28, 2017, the Presiding Judge dismissed the above-captioned case after the Enforcement Bureau (Bureau), Maritime Communications/Land Mobile, LLC (Maritime), and Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (collectively, Choctaw) entered into a joint stipulation regarding the last remaining facilities in dispute and

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resolved all of the outstanding issues in the proceeding.¹ On October 30, 2017, Warren Havens (Havens), apparently proceeding as a *pro se* party, filed an appeal of the Presiding Judge's *Order of Dismissal* (Havens Appeal).² Havens is no longer a party to this matter, having been excluded from the proceeding in April 2015 by the Presiding Judge.³ On October 30, 2017, Polaris PNT PBC ("Polaris"), which is not – and never has been – a party to the proceeding, filed a separate appeal of the *Order of Dismissal* (Polaris Appeal).⁴ Polaris is apparently "controlled by Warren Havens," who signed the Polaris Appeal.⁵ Each of these appeals incorporate the other in their entirety and/or join in the other.

2. Accordingly, in the interest of conserving the Commission's resources, and as Havens and Polaris have expressly indicated they jointly appeal the *Order of Dismissal*, the Chief, Enforcement Bureau, by her attorneys, herein respectfully opposes the Polaris Appeal and the Havens Appeal in a single response.

Procedural Background

3. On April 19, 2011, the Commission released an Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing (HDO) against Maritime, a participant in Auction No. 61, a licensee of various authorizations in the wireless radio services, and an

¹ See *Order of Dismissal*, FCC 17M-35 (ALJ, rel. Sept. 28, 2017) (*Order of Dismissal*). See also Joint Stipulation between Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, Maritime Communications/Land Mobile, LLC and the Enforcement Bureau on Discontinuance of Operations of Certain Site-Based Facilities, EB Docket No. 11-71, filed Sept. 22, 2017.

² See [Havens] Appeal of Order of Dismissal, FCC 17M-35 and Underlying Decisions and Actions in EB Docket 11-71, filed Oct. 30, 2017 (Havens Appeal).

³ See *Memorandum Opinion and Order*, FCC 15M-14 (ALJ, rel. Apr. 22, 2015).

⁴ See [Polaris PNT PBC] Appeal of Order of Dismissal, FCC 17M-35 and Underlying Decisions and Actions in EB Docket 11-71, filed Oct. 30, 2017 (Polaris Appeal).

⁵ Polaris Appeal at 3. Throughout the instant proceeding, Havens continually flooded the record by filing pleadings *pro se* and also on behalf of entities he controls. In every instance, however, Havens and his entities appear to have always taken the same position(s), thus only serving to waste significant time of all involved.

applicant for modification of various authorizations in the wireless radio services.⁶ Specifically, the HDO raised substantial and material questions of fact as to whether Maritime “(i) violated the designated entity rules and received a credit on its obligations to the United States Treasury of approximately \$2.8 million to which it was not entitled; (ii) repeatedly made misrepresentations to and lacked candor with the Commission in connection with its participation in Auction No. 61 and the claimed bidding credit; and (iii) failed to maintain the continuing accuracy and completeness of information furnished in its still pending long-form application.”⁷ The HDO also designated for hearing the issue of whether operations at 169 site-based facilities licensed to Maritime had been permanently discontinued.⁸ In the hearing proceeding, this issue has been referred to as Issue (g).

4. All of the issues in the HDO have now been resolved through three procedural developments. First, the Presiding Judge adopted a joint stipulation entered into between the Bureau and Maritime that operations at 153 of the 169 site-based facilities at issue had been permanently discontinued.⁹ Second, Maritime and Choctaw requested – and the Commission granted – extraordinary relief pursuant to the Commission’s *Second Thursday* doctrine, permitting the processing of an application to assign all of Maritime’s licenses (other than the site-based licenses implicated by Issue (g) of the HDO) to Choctaw, and thus terminating the issues in the hearing arising from Maritime’s participation in Auction No. 61 and its basic

⁶ See *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, 26 FCC Rcd 6520 (2011) (HDO).

⁷ HDO at 2, para. 2.

⁸ See HDO at 2, para. 2; 28-29, paras. 61 and 62(g).

⁹ See *Order*, FCC 14M-31 (ALJ, rel. Oct. 9, 2014).

qualifications.¹⁰ Third, the Bureau, Maritime, and Choctaw entered into a joint stipulation, agreeing that operations at the 16 remaining site-based facilities, *i.e.*, the remaining Issue (g) licenses, had not been permanently discontinued.¹¹

5. The HDO made Havens (and entities he then-controlled which are not parties to the instant appeals) parties to this proceeding in their capacity as a petitioner to one or more of the captioned applications.¹² Havens and his companies participated in the discovery process, attended the hearing, and submitted proposed findings of fact. As a result of Havens' "deliberate transgressions" and the extensive "history of [his] disruptive disregard of orders and otherwise contemptuous behavior" during the course of this proceeding, however, the Presiding Judge prohibited Havens and his companies from further participating as parties.¹³ On April 29, 2015, Havens and two of the companies named as parties, Environmental LLC and Verde Systems LLC, filed separate interlocutory appeals of this *Order*.¹⁴ On May 6, 2015, the Bureau opposed these interlocutory appeals.¹⁵ The case proceeded without Havens' or his companies' further participation.

Neither Polaris nor Havens Have Standing to Appeal the *Order of Dismissal*

6. Section 1.302 of the Commission's rules (Rules) restricts the right to appeal a

¹⁰ See *MCLM Maritime Communications/Land Mobile, LLC, Debtor-In-Possession Application To Assign Licenses To Choctaw Holdings, LLC*, Order on Reconsideration and Memorandum Opinion and Order, 31 FCC Rcd 13729 (2016).

¹¹ See Joint Stipulation between Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, Maritime Communications/Land Mobile, LLC and the Enforcement Bureau on Discontinuance of Operations of Certain Site-Based Facilities, EB Docket No. 11-71, filed Sept. 22, 2017.

¹² See HDO at 31, para. 72.

¹³ *Memorandum Opinion and Order*, FCC 15M-14, at 2, para. 2. This *Order* catalogues at length the conduct that precipitated the Presiding Judge's decision to bar Havens and his companies from the proceeding. See *id.* at 2-12, paras. 4-21.

¹⁴ See ENL-VSL Interlocutory Appeal As Of Right, filed Apr. 29, 2015 (ENL-VSL Appeal); [Havens] Interlocutory Appeal, filed Apr. 29, 2015; [Havens] Interlocutory Appeal Errata Copy, filed Apr. 30, 2015.

¹⁵ See Enforcement Bureau's Opposition to Interlocutory Appeals, filed May 6, 2015. These appeals are pending before the Commission.

presiding officer's final ruling to "any *party* to the proceeding."¹⁶ Polaris was not named a party in the HDO, never petitioned to intervene in this proceeding, and never, to the Bureau's knowledge, participated in this proceeding. Thus, pursuant to Section 1.302 of the Rules, Polaris has no standing to appeal the Presiding Judge's *Order of Dismissal*.

7. Nevertheless, the Polaris Appeal vaguely argues, without explanation, that Polaris has standing in this case "by means of an assignment of litigation claims from Havens to Polaris of some of Havens (sic) claims in the matters of this Petition."¹⁷ The Polaris Appeal, however, does not identify any of the "claims" it refers to and fails to explain how any such "claims" relate to this proceeding. Instead, the Polaris Appeal loosely cites to a "Havens and Polaris filing regarding DA 1768, February 17, 2017" as the basis for its standing.¹⁸ The Polaris Appeal does not attach this filing. Based upon the Bureau's review of the Commission's electronic comment and filing system (ECFS), it appears that Havens and Polaris filed four pleadings on February 17, 2017. Of these filings, it is likely that the reference in the instant appeal is to a joint Havens/Polaris filing made in an unrelated docket – WT Docket 12-229.¹⁹ This pleading, however, does not appear to provide any further explanation as to why Polaris would have standing as a party in this proceeding.²⁰ Thus, Polaris has not established any basis for it to have standing to appeal the Presiding Judge's *Order of Dismissal* in this proceeding. On this basis

¹⁶ 47 C.F.R. § 1.302(a) (emphasis added).

¹⁷ Polaris Appeal at 2. In addition, we note that Polaris is not a Commission licensee. See *In the Matter of Maritime Communications/Land Mobile, LLC, Debtor-In-Possession Applications to Renew the Licenses for AMTS Stations WQGF315, WQGF316, WQGF317, WQGF318 Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline Application to Assign Licenses to Choctaw Holdings, LLC*, FCC File Nos. 0007603776-79 FCC File No. 0005552500, Order, by Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, at para. 10 (rel. May 11, 2017) (stating that "neither [Warren] Havens nor Polaris is a Commission licensee").

¹⁸ Polaris Appeal at 2, n.2.

¹⁹ See [Warren Havens, and Polaris PNT PBC] Conditionally Submitted Application for Review, and In the Alternative Request under Section 1.41, WT Docket 12-229, filed Feb. 17, 2017.

²⁰ This pleading's only apparent reference to an assignment of rights is that "Havens has assigned certain rights and assets to Polaris to enable it to pursue wireless in the public benefit and for commercial gain." *Id.* at 3, n.4.

alone, the Polaris Appeal should be denied.

8. The Havens Appeal should also be denied because, like Polaris, Havens has no standing to appeal the Presiding Judge's *Order of Dismissal*. As discussed above, in April 2015, the Presiding Judge excluded Havens from further participation in this proceeding.²¹ Although Havens appealed this *Order*, his appeal is still pending before the Commission.²² Thus, at present, Havens is not a party to this proceeding and his appeal should thus be denied.

The Jointly Filed Havens/Polaris Appeals Exceed the Page Limit

9. Section 1.302(e) of the Rules sets the page limit for appeals at 25 double-spaced pages.²³ The Polaris Appeal is four (4) pages with an additional 17 pages of attachments. The Havens Appeal is 21 pages. However, the Polaris Appeal and Havens Appeal each incorporate in their entirety the others' appeals – *i.e.*, the Polaris appeal “joins in the Havens Appeal” and the Havens Appeal “joins in the Polaris Appeal.”²⁴ The combined length of these joined appeals totals more than 40 pages, thus far exceeding the statutory page limit. For this reason, both appeals should be denied.

10. In addition, the Havens Appeal seeks to incorporate six other pleadings.²⁵ Notably, it is clear from the Havens Appeal that Havens was aware of the statutory page limit and that incorporating these additional pleadings would exceed that limit. In fact, he preemptively attempts to cure this defect by suggesting that if these six additional pleadings “are deemed to exceed such limit, then Appellant references and incorporates only up to the pages of

²¹ See *Memorandum Opinion and Order*, FCC 15M-14 (ALJ, rel. Apr. 22, 2015).

²² See *supra* n.14.

²³ See 47 C.F.R. § 1.302(e).

²⁴ See Polaris Appeal at 2; Havens Appeal at 2.

²⁵ See Havens appeal at 4 (“Appellant references and incorporates herein the below-listed pleadings before the FCC”).

his *Memo in Support of and Related to Notice of Appeal* filed October 6, 2017, that discuss his legal interest and standing, up to the point at which this Appeal's page limit is not exceeded . . . starting on page 2 and continuing to page 12."²⁶ The onus, however, is on the party submitting a document to structure its pleading to comply with the Commission's rules (especially where, as here, it is aware of those limitations) and not on the Commission to cut-and-paste arguments together into a single Frankenstein-esque pleading. To the extent the Havens Appeal seeks to incorporate these additional six pleadings, it also far exceeds the 25-page limit allowed by the Rules.

11. For these reasons, the Polaris and Havens Appeals both exceed the page limit and they should both be denied.

Neither Appeal Offers Any Legal or Factual Basis to Challenge the *Order of Dismissal*

12. The Polaris Appeal offers no substantive argument regarding the *Order of Dismissal*. In fact, the Polaris Appeal does not contain a single citation to the *Order of Dismissal*. Rather, the Polaris Appeal simply attaches a motion for declaratory ruling regarding Havens' and Polaris' claims that it should have standing in this docket and other dockets related to Maritime and Choctaw.²⁷ This motion, which Havens and Polaris apparently filed with the Wireless Telecommunications Bureau on August 16, 2017 – and never previously served on the Bureau – pre-dates the *Order of Dismissal* by more than a month. Thus, it cannot offer any basis upon which to challenge the *Order of Dismissal*. As the Polaris Appeal lacks any discernable legal or factual basis for challenging the *Order of Dismissal*, it should be denied.

13. The Havens Appeal likewise fails to provide any citation to, or discussion of, the

²⁶ Havens Appeal at 4.

²⁷ See Polaris Appeal at the Attachment.

Order of Dismissal it purportedly challenges. Rather, the Havens Appeal amounts to nothing more than a wandering collection of conspiracy theories alleging, *inter alia*, that the Presiding Judge failed to conduct a “proper fact-finding hearing”²⁸ and “committed reversible error by allowing the Enforcement Bureau to abandon its prosecution of Maritime.”²⁹ In focusing on such theories, the Havens Appeal appears to ignore the extensive record that the Bureau developed through several years of discovery and depositions (during which Havens – who was then represented by counsel – had the opportunity to participate) and the comprehensive evidence that the Presiding Judge admitted into the record during a three-day hearing (at which Havens was also allowed to participate) on which the joint stipulation (and the ensuing *Order of Dismissal*) concerning the remaining 16 site-based facilities was based. As with the Polaris Appeal, the Havens Appeal offers no legal or factual basis upon which to challenge the *Order of Dismissal*. Thus, like the Polaris Appeal, the Havens Appeal should also be denied.

Conclusion

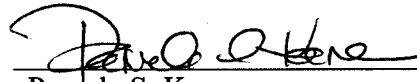
14. For the foregoing reasons, the Enforcement Bureau respectfully requests that the Commission deny both the Polaris and Havens Appeals.

²⁸ Havens Appeal at 11.

²⁹ *Id.* at 9.

Respectfully submitted,

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November 14, 2017

CERTIFICATE OF SERVICE

Pamela S. Kane, certifies that she has on this 14th day of November, 2017, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO HAVENS AND POLARIS APPEALS OF ORDER OF DISMISSAL" to:

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